

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:	:	Case No. 1-20-00841
	:	
CRAIG B. DEIMLER,	:	
WILLIAM OLIVER FISHER-DEIMLER,	:	
Debtors	:	Chapter 13
CRAIG B. DEIMLER,	:	
WILLIAM OLIVER FISHER-DEIMLER,	:	
Movants/Objectors,	:	OBJECTION TO CLAIM #34
v.	:	
	:	
JOHN AND CINDY SIMPKINS,	:	
Respondents/claimants	:	

**RESPONDENTS' AMENDED BRIEF IN OPPOSITION
TO DEBTORS' OBJECTION TO PROOF OF CLAIM**

AND NOW, this 22nd day of December 2020, come John and Cynthia Simpkins (the "Respondents"), and explain to the Court why the Debtors' objection to their Proof of Claim ("POC") must be denied and dismissed, as follows:

FACTUAL AND PROCEDURAL BACKGROUND

Respondents wanted a reputable company to remodel their laundry room, kitchen and full bath. They found Deimler Family Construction through an on-line Google search. All of their contacts were with Debtor Craig Deimler. They signed a contract with Deimler Family Construction, which contract was prepared and handed to them by Debtor Craig Deimler. The contract is attached as pages 1-11 of Docket #112 (hereafter the "Contract"). Respondents made several payments under the Contract, including one on October 23, 2018, in the amount of

\$12,000.00; that payment was endorsed on the back by Craig Deimler individually. See, page 28 of Docket #112. No payment was made payable to GCD Construction, Inc.

Due to the poor (or lack of) performance by Deimler Family Construction, Respondents were forced to hire and pay another contractor to rip out and redo the work for which they had contracted with Deimler Family Construction. Respondents did not make the final payment to Deimler Family Construction; rather, after paying the new contractor, they are out of pocket a net additional cost of \$130,000 (as set forth in their POC).

Debtor Craig Deimler filed his petition under Chapter 13 on March 4, 2020. Respondents filed their POC on May 12, 2020. Debtors filed an Objection to the POC on June 24, 2020, and Respondents filed their Response to the Objection on July 21, 2020. The Court held a status conference on September 23, 2020, during which it directed a briefing schedule relative to the objection to POC. This is the Respondents' Brief in Opposition to the objection to POC.

ISSUE PRESENTED

Whether the other party to the Contract is Debtor Craig B. Deimler or GCD Construction, Inc.?

Suggested response: Debtor Craig B. Deimler

LEGAL ARGUMENT

Debtors' Brief in Support of their Objection to the POC (Docket #110) attempts to make lemonade out of the lemons created by Debtor Craig Deimler, but it does not succeed.

The parties agree that the Contract is the relevant legal document in this case. Where they disagree is as to who is party to the Contract along with the Respondents. As noted by Debtors in their Brief (Docket #1120), the Contract is between Deimler Family Construction as contractor (see p.9 of the Contract) and Respondents as the homeowners. Also, the top of every page

includes the logo for Deimler Family Construction. While the Contract does authorize GCD Construction, Inc. to perform the work under the Contract, GCD is not identified as a party to the Contract.

So, the question is, who or what is Deimler Family Construction, the identified Contractor and other party to the Contract? Deimler Family Construction is a fictitious name owned by and registered with the Department of State (“DOS”) to Debtor Craig Deimler. See, Exhibit “A” attached to Respondents’ original Brief (Docket #123) and incorporated by reference herein. According to DOS, Deimler Family Construction was registered as a fictitious name in 2015 and was still active at the time of filing of the instant case. Not only that, as recently as the end of 2019, Debtor Craig Deimler was still operating as Deimler Family Construction as evidenced by the docket for an MDJ suit brought against both Debtor Craig Deimler and Deimler Family Construction for eviction (possession of real property) and money damages. See, Exhibit “E” attached hereto and incorporated by reference herein.

The purpose of registering a fictitious name is so that it can be known who is operating under that name. Had GCD Construction, Inc. wanted to operate as Deimler Family Construction, it could have taken ownership of the fictitious name from Debtor Craig Deimler. GCD Construction, Inc. knew about fictitious names since it registered one, Deimler & Sons Construction, in 2012. See, Exhibit “B” attached to Respondents’ original Brief (Docket #123) and incorporated by reference herein. However, GCD Construction, Inc. did not own the fictitious name Deimler Family Construction and therefore had no legal right to use or conduct business under that name.

Further, Debtor Craig Deimler held himself out to the public as the owner of Deimler Family Construction. See, Exhibit “C” attached to Respondents’ original Brief (Docket #123) and incorporated by reference herein. Also, Deimler Family Construction advertised itself, but not as a part of GCD Construction, Inc. See, Exhibit “D” attached to Respondents’ original Brief (Docket #123) and incorporated by reference herein.

Finally, and perhaps most importantly, if this Court finds the Contract to be ambiguous as to who is Deimler Family Construction, the Contractor, then the Contract as a written document must be construed against the drafter. Rusiski v. Pribonic, 515 A.2d 507, 510 (Pa. 1986); Central Transportation, Inc. v. Board of Assessment Appeals of Cambria County, 417 A.2d 144, 149 (Pa. 1980); Restatement (Second) of Contracts § 206 (1981). “Where a document is found to be ambiguous, inquiry should always be made into the circumstances surrounding the execution of the document in an effort to clarify the meaning that the parties sought to express in the language which they chose.” Burns Manufacturing Co., v. Boehm, 356 A.2d 763, 766 n.3 (Pa. 1976). Here, the subject Contract was drafted by Debtor Craig Deimler; at no point did he ever tell the Respondents that the contract was with GCD Construction, but only Deimler Family Construction. Any ambiguity must be construed against Debtor Craig Deimler (and the interpretation he urges).

CONCLUSION

The Contract identifies Deimler Family Construction as the Contractor. Deimler Family Construction is a fictitious name registered to and owned by Debtor Craig Deimler. As such, Debtor Craig Deimler is the other party to the Contract and the filing of the POC in this case is proper.

WHEREFORE, the Respondents respectfully requests that this Honorable Court deny and dismiss the Debtors' objection to their POC, and for such other relief as may be just and appropriate.

AUSTIN LAW FIRM LLC

By: /s/ Sara A. Austin

Sara A. Austin, Esq.
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York, PA 17403
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Supreme Ct. I.D. No. 59052
Counsel for Respondents

Magisterial District Judge 12-2-01

DOCKET

Docket Number: MJ-12201-LT-0000468-2019

Landlord/Tenant Docket

Gary Deimler
v.
Craig Deimler, Deimler Family Construction

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CASE INFORMATION

<u>Judge Assigned:</u>	Michael J. Smith	<u>File Date:</u>	12/17/2019
<u>Claim Amount:</u>	\$6,000.00	<u>Case Status:</u>	Closed
<u>Judgment Amount:</u>	\$6,242.30	<u>County:</u>	Dauphin

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>				<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Start Time</u>	<u>Room</u>	<u>Judge Name</u>	<u>Status</u>
Recovery of Real Property Hearing	12/27/2019	2:15 pm		Michael J. Smith	Scheduled

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Participant Name</u>	<u>Address</u>
Defendant	Deimler, Craig	Harrisburg, PA 17111
Defendant	Deimler Family Construction	Harrisburg, PA 17111
Plaintiff	Deimler, Gary	Dauphin, PA 17018

DISPOSITION SUMMARY

<u>Docket Number</u>	<u>Plaintiff</u>	<u>Defendant</u>	<u>Disposition</u>	<u>Disposition Date</u>
MJ-12201-LT-0000468-2019	Gary Deimler	Deimler Family Construction	Judgment for Plaintiff	12/27/2019
MJ-12201-LT-0000468-2019	Gary Deimler	Craig Deimler	Judgment for Plaintiff	12/27/2019

CIVIL DISPOSITION / JUDGMENT DETAILS

Disposition Date: 12/27/2019

Monthly Rent: \$3,000.00

<u>Defendant(s)</u>	<u>Plaintiff(s)</u>	<u>Disposition</u>	<u>Joint/Several Liability</u>	<u>Individual Liability</u>	<u>Net Judgment</u>
Craig Deimler; Deimler Family Construction	Gary Deimler	Judgment for Plaintiff	\$6,242.30	\$0.00	\$6,242.30

Judgment Components:

<u>Type</u>	<u>Amount</u>	<u>Deposit Amount</u>	<u>Adjusted Amount</u>
*Costs	\$28.75	\$0.00	\$28.75
*Rent in Arrears	\$6,000.00	\$0.00	\$6,000.00
*Costs	\$213.55	\$0.00	\$213.55

* Is Joint/Several

Civil Disposition Details:

Grant possession.	No
Grant possession if money judgment is not satisfied by the time of eviction.	Yes

MDJS 1200

Printed: 12/22/2020 10:11 am

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EXHIBIT "E"

Magisterial District Judge 12-2-01

DOCKET

Docket Number: MJ-12201-LT-0000468-2019

Landlord/Tenant Docket



Gary Deimler
v.
Craig Deimler, Deimler Family Construction

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DOCKET ENTRY INFORMATION

<u>Filed Date</u>	<u>Entry</u>	<u>Filer</u>	<u>Applies To</u>
01/17/2020	Order for Possession Successfully Served	Magisterial District Court 12-2-01	Craig Deimler, Defendant
01/17/2020	Order for Possession Successfully Served	Magisterial District Court 12-2-01	Deimler Family Construction, Defendant
01/15/2020	Order for Possession Issued	Magisterial District Court 12-2-01	Craig Deimler, Defendant
			Deimler Family Construction, Defendant
01/14/2020	Order for Possession Requested	Gary Deimler	Craig Deimler, Defendant
			Deimler Family Construction, Defendant
12/27/2019	Judgment for Plaintiff	Magisterial District Court 12-2-01	Craig Deimler, Defendant
12/27/2019	Judgment for Plaintiff	Magisterial District Court 12-2-01	Deimler Family Construction, Defendant
12/27/2019	Judgment Entered	Magisterial District Court 12-2-01	Craig Deimler, Defendant
12/27/2019	Judgment Entered	Magisterial District Court 12-2-01	Deimler Family Construction, Defendant
12/23/2019	Landlord/Tenant Complaint Successfully Served	Magisterial District Court 12-2-01	Craig Deimler, Defendant
12/23/2019	Landlord/Tenant Complaint Successfully Served	Magisterial District Court 12-2-01	Deimler Family Construction, Defendant
12/17/2019	Landlord/Tenant Complaint Issued via Hand Delivery	Magisterial District Court 12-2-01	Craig Deimler, Defendant
12/17/2019	Landlord/Tenant Complaint Issued via Hand Delivery	Magisterial District Court 12-2-01	Deimler Family Construction, Defendant
12/17/2019	Landlord/Tenant Complaint Filed	Gary Deimler	

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 22, 2020, a true and correct copy of the foregoing document was or will be served on the following via ECF:

Kara Gendron, Esq.
Counsel for Debtor

Charles J. DeHart, III, Trustee
Ch. 13 Trustee

/s/ Sara A. Austin_____